



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,780	07/13/2001	Robert J. Dunst JR.	076883-0268936	1823

27498 7590 02/13/2006

PILLSBURY WINTHROP SHAW PITTMAN LLP  
P.O. BOX 10500  
MCLEAN, VA 22102

EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
----------	--------------

3627

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/904,780	DUNST ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven B. McAllister	3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5,7 and 9-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7 and 9-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/21/2005 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-15 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is rejected because it recites determining whether "the identified item has been blocked" and "when the identified item has not been blocked", issuing an alert. However, "blocked" is indefinite because it can be construed to mean whether the item has been physically obstructed on the shelf, or whether a logical inhibit against issuing the alert exists in the computer system. The specification discusses both types and it is unclear what is intended.

As to claim 20, "include out-of-stock condition of items include mssign sign conditions..." is not clear.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 7, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (5,933,813) in view of McConnell et al (2001/0049690).

Teicher shows collecting a plurality of transaction data blocks from one or more data collection devices, the data including POS information. It further shows updating a table of transaction data in memory; and receiving a response indicative of conditions of an identified item on shelf space in the store (see e.g., col. 4, line 65 to col. 5, line 5 – the manager inputting replenishment information).

Teicher does not show issuing an alert when information in the data blocks satisfies predetermined criteria, the alert identifying an item and store.

McConnell et al show issuing an alert when information in the data blocks satisfies predetermined criteria, the alert identifying an item and store (see e.g., par. 0083). It would have been obvious to one of ordinary skill in the art to modify the method of Teicher by issuing an alert when information in the data blocks satisfies

Art Unit: 3627

predetermined criteria, the alert identifying an item and store as taught by McConnell in order to verify and fix out of stock situations in a timely manner.

As to claim 2, Teicher in view of McConnell show returning to the collecting step, updating, issuing, and analyzing steps performed iteratively.

As to claim 3, Teicher in view of McConnell inherently show initializing each field before the collecting step since such a step must occur in order to provide valid collected data (e.g., sales must be set to zero at the initially in order to provide valid sales data as sales data are collected and added.); and initializing when the period is over.

As to claim 5, Teicher in view of McConnell shows all elements of the claim except the particular polling methodology. However, the examiner takes official notice that it is notoriously old and well known in the art to poll data as recited. It would have been obvious to one of ordinary skill in the art to do so in order to take advantage of existing methodologies.

As to claim 7, Teicher in view of McConnell show all elements of the claim.

As to claim 16, Teicher in view of McConnell show all elements of the claim. It is noted that Teicher in view of McConnell shows stocking the shelf, as well, and transmitting back a descriptor describing the stocked condition of the shelf.

As to claim 22, Teicher in view of McConnell show all elements of the claim except sending information about conditions including: out-of-stock conditions, missing sign conditions, blocked shelf conditions, and product-to-the –back-of-the-shelf conditions. However, the examiner takes official notice that inspecting and providing

Art Unit: 3627

information regarding these conditions is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher by sending information regarding these conditions in order to update the system regarding the status of the item.

As to claim 19, Teicher shows means for collecting a plurality of transaction data blocks comprising scanners or other sensors; means for constructing a temporary table and determining a calculated value each field comprising a CPU and memory; means for adding the calculated value to an existing value comprising a CPU and memory, memory, and screen; and means for receiving a response, comprising e.g., the portable unit or the store computer inputs means.

Teicher does not show means for determining if an alert condition exists and for issuing the alert.

McConnell shows means for determining if an alert condition exists and for issuing the alert. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Teicher by providing the elements of McConnell in order to provide warnings of out of stock situations.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConnell et al in view of Teicher et al.

McConnell shows measuring a number of units sold; generating an alert when the number sold falls below a statistical measure of the number expected to be sold, the

alert identifying the item and store; determining whether an alert has been received; and inspecting a shelf location corresponding with the item (see e.g., pars. 0083, 0084).

McConnell does not show selecting a descriptor to describe the shelf location, or transmitting the descriptor to the system.

Teicher et al show selecting a descriptor to describe the shelf location, and transmitting the descriptor to the system (comprising upon restocking the shelf, transmitting replenishment information to the system, the replenishment information describing the inventory condition of the shelves). It would have been obvious to one of ordinary skill in the art to modify the method of McConnell by selecting a descriptor to describe the shelf location, and transmitting the descriptor to the system as taught by Teicher in order to update the system regarding the inventory status of the items.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher in view of McConnell as applied to claims 1 and 7 above, and further in view of Swartzel et al (2002/0109593).

Teicher in view of McConnell show all elements of the claim except determining whether the identified item has been blocked; and issuing the alert when the item is not blocked.

Swartzel shows determining whether the identified item has been blocked; and issuing the alert when the item is not blocked (see e.g., par. 0106). It would have been obvious to one of ordinary skill in the art to further modify the method of Teicher as taught by Swartzel in order to avoid redundant alerts.

As to claims 10 and 11, Teicher in view of McConnell and Swartzel shows all elements.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConnell et al in view of Teicher et al .

McConnell shows a server for receiving transaction data; a transaction processor for arranging the data; an alert generator; a plurality of inventory management devices for generating transaction data (POS terminals); and a plurality of electronic devices configured to receive alerts (since McConnell shows monitoring a plurality of stores and sending alerts to those stores).

McConnell does not explicitly show that the electronic devices are adapted to transmit a response.

Teicher shows devices adapted to transmit the response since it shows sending a response to the system comprising the condition of the shelf (the replenishment information). It would have been obvious to one of ordinary skill in the art to modify the apparatus of McConnell by adapting the devices to transmit a response in order to allow for updating the information of the system.

As to claim 21, it is noted that the information transmitted by the device is not further limiting on the device.

Alternatively, McConnell shows all elements of the claim except a device capable of transmitting a response indicative of the recited conditions. However, the examiner takes official notice that it is notoriously old and well known in the art to send any



Art Unit: 3627

information with a device pertinent to a particular situation. It would have been obvious to one of ordinary skill in the art to further modify the apparatus of McConnell thusly in order to update the system when the recited conditions exist.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (571) 272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "S B McAllister".

Steven B. McAllister

Steven B. McAllister  
Primary Examiner  
Art Unit 3627

**STEVE B. MCALLISTER**  
**PRIMARY EXAMINER**